

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

R.R.; G.J.; R.G.; all others similarly situated; and
DISABILITY RIGHTS WASHINGTON,

Plaintiffs,

v.

WASHINGTON STATE DEPARTMENT OF
SOCIAL AND HEALTH SERVICES;
PATRICIA LASHWAY, in her official capacity
as Acting Secretary of the Department of Social
and Health Services; SPECIAL COMMITMENT
CENTER; WILLIAM VAN HOOK, in his
official capacity as Chief Executive Officer of
Special Commitment Center,

Defendants.

No.

COMPLAINT

Plaintiffs allege the following based on information and belief and investigation of
counsel.

I. Preliminary Statement

1. This litigation is brought by and on behalf of residents with disabilities confined
at the Special Commitment Center (“SCC”) who are not receiving individualized and appropriate
care and treatment, including sex offender treatment, despite being committed to the facility
expressly for the purpose of such treatment.

1 2. Specifically, residents with serious mental illness, developmental and intellectual
2 disabilities, cognitive conditions, and brain injuries are unable to participate in or benefit from
3 the sex offender treatment offered at the SCC due to their disability. Treatment plans note that
4 these residents' ability to program is impeded by their disability, but nevertheless continue to
5 direct residents to engage in the sex offender programming in order to achieve release. Some
6 residents have been following these treatment plans, engaging in programming for decades, with
7 little to no progress due to their cognitive limitations.

8 3. Other residents are simply unable to engage in sex offender programming at all
9 due to serious mental illness. Treatment plans direct that these residents engage in programming
10 once their psychiatric symptoms have remitted. However, residents are not provided with the
11 intensive psychiatric care or rehabilitative programming required to ameliorate or address their
12 serious mental illness. Independent inspection teams have cited the inadequacy of programming
13 and care for residents with mental illness for years, with little to no improvement. State court
14 records indicate that one outside evaluator opined that the SCC has provided "inadequate and
15 negligent psychiatric mistreatment" to some of its residents.

16 4. Similarly, residents who engage in potentially disruptive behaviors due to their
17 disability are precluded from the sex offender programming until those behaviors are addressed,
18 but are not provided with the programming and staff support required to actually address those
19 behaviors.

20 5. Residents with disabilities are thus placed in a cyclical and impossible treatment
21 regime in which they are directed to successfully participate in sex offender treatment in order to
22 gain release, but denied the individualized and appropriate treatment and supports necessary to
23 do so. These residents are instead placed in highly restrictive back-wards of the facility. These

wards have been likened to a correctional setting by an independent inspection team, prompting the team to question whether the facility is simply “warehousing” these residents rather than treating them. These residents have also been subject to punitive responses to their disability related behaviors, including seclusion for lengths of time “virtually unheard of in modern psychiatric settings.” These residents have been forgotten, languishing in the facility for years, if not decades, without receiving the care and treatment that Defendants are statutorily and constitutionally required to provide, and without any realistic chance of gaining release.

II. Jurisdiction and Venue

6. This action is brought pursuant to 42 U.S.C. § 1983 and § 12132.

7. This court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1331 (federal question jurisdiction) and 28 U.S.C. § 1343 (civil rights jurisdiction).

8. Venue in this court is proper pursuant to 28 U.S.C. § 1391.

III. Parties

9. Plaintiff R.R. was civilly committed to the SCC in 2004, at the age of 21. He is currently in the care and custody of the Department of Social and Health Services at the SCC for an indefinite period of time. He has been and continues to be injured by the acts and omissions of Defendants.

10. Plaintiff G.J. was civilly committed to the SCC in 2014, at the age of 21, following a five year placement at the Maple Valley School, and state facility for youth involved with the juvenile justice system. He is currently in the care and custody of the Department of Social and Health Services at the SCC for an indefinite period of time. He has been and continues to be injured by the acts and omissions of Defendants.

1 11. Plaintiff R.G. was civilly committed to the SCC in 2004, when he was 20. He is
2 currently in the care and custody of the Department of Social and Health Services at the SCC for
3 an indefinite period of time. He has been and continues to be injured by the acts and omissions of
4 Defendants.

5 12. Plaintiff Disability Rights Washington (“DRW”), a non-profit corporation duly
6 organized under the laws of the State of Washington, is the state-wide protection and advocacy
7 system designated by the Governor of the State of Washington to protect and advocate for the
8 legal and civil rights of those residents of this state who have disabilities, pursuant to the DD
9 Act, 42 U.S.C. § 15041 *et seq.*, the PAIMI Act, 42 U.S.C. § 10801 *et seq.*, the PAIR Act, 29
10 U.S.C. § 794e, and the PATBI Act, 42 U.S.C. § 300d-53 *et seq.*, RCW § 71A.10.080(2). As
11 such, DRW fulfills its federal mandate by providing an array of protection and advocacy services
12 to people with disabilities across Washington, including the plaintiffs in this case. DRW is
13 governed by a board of directors comprised predominantly by people with disabilities and their
14 family members and this board is advised by two advisory councils, the Disability Advisory
15 Council and the statutorily mandated Mental Health Advisory Council, also primarily comprised
16 of people with disabilities and their family members.

17 13. Over the past fifteen years, DRW has repeatedly engaged in advocacy and
18 litigation over the right of individuals with mental illness, intellectual or developmental
19 disabilities, brain injuries, or other cognitive conditions, to receive individualized and
20 appropriate care and treatment while confined in state institutions. In 1999, after almost two
21 years of negotiation, DRW filed *Allen v. Western State Hospital, et al.*, USDC C99-5018RJB, on
22 behalf of patients with developmental disabilities civilly confined at Western State Hospital. The
23 settlement in that case resulted in the creation of a specialized “habilitative mental health” unit,

1 designed to provide intensive habilitative, or skill building, treatment in addition to, or instead of,
2 the standard psychiatric care provided at the state hospital. Similar litigation, *Marr, et al., v.*
3 *Eastern State Hospital*, USDC C-02-0067-WFN, was settled against Eastern State Hospital in
4 2002, again creating a specialized habilitative unit for patients with developmental disabilities,
5 borderline intellectual functioning, traumatic brain injuries, and other cognitive conditions. The
6 settlement in that case also mandated appropriate psychiatric care and active treatment for that
7 population as well as protection from harm. In *Rust, et al., v. Western State Hospital, et al.*,
8 USDC C00-5749 (RJB), DRW again brought litigation against Western State Hospital regarding
9 the care and treatment of this population, focusing on those patients confined in the forensic unit
10 at the hospital. Again, the result was the creation of a specialized unit to provide habilitative
11 mental health care as well as protection from harm and appropriate discharge planning. Based
12 on this experience, in 2014 DRW worked collaboratively with the Washington State Department
13 of Corrections to create the Skill Building Unit at Washington Corrections Center, a specialized
14 unit that provides targeted programming and support for inmates with traumatic brain injuries
15 and other cognitive conditions. DRW continues to monitor all of these institutional settings.

16 14. Plaintiff DRW has received reports regarding the care and treatment of residents
17 at the SCC for many years and, in September 2014, DRW began monitoring the facility, focusing
18 on the care and treatment of residents with mental illness, developmental and intellectual
19 disabilities, traumatic brain injuries and other cognitive conditions.

20 15. Since that time, DRW has continued to monitor the facility and has engaged in
21 individual and systemic advocacy in relation to SCC residents; it has also conducted
22 investigations into the circumstances surrounding two resident deaths.
23

1 16. Defendant Washington State Department of Social and Health Services (“DSHS”)
2 operates the SCC, the only total confinement facility in the State designated to provide control,
3 care, and treatment for individuals civilly committed pursuant to RCW 71.09.

4 17. Defendant Patricia Lashway is Acting Secretary of DSHS and is sued in her
5 official capacity. Defendant Lashway is responsible for the administration of Defendant SCC.

6 18. Defendant SCC is a total confinement facility that is charged with providing
7 control, care, and treatment for individuals civilly committed to the facility pursuant to RCW
8 71.09. Defendant SCC is located on McNeil Island, in Pierce County.

9 19. The SCC’s biennial budget for fiscal years 2016 and 2017 is \$74,946,000.

10 20. In 2013, SCC estimated that the cost of confining a resident at the facility is
11 \$151,770 per year.

12 21. Defendant William Van Hook is the Chief Executive Officer of the SCC and is
13 sued in his official capacity. Defendant Van Hook replaced former CEO Mark Strong in April
14 2016 and as the SCC’s current CEO, Defendant Van Hook is directly responsible for oversight,
15 operation and management of Defendant SCC and the control, care and treatment for residents
16 confined at that facility.

17 **IV. Statement of Facts Entitling Plaintiffs to Relief**

18 **A. Defendants have a duty to provide individualized and adequate care and treatment**
19 **to people confined at the SCC.**

20 22. Section 71.09 of the Revised Code of Washington (“RCW”) governs the
21 procedures for committing individuals to the SCC for indefinite care and treatment.

1 23. Under that section, Defendant SCC is defined as a total confinement facility and
2 charged with providing for the control, adequate care and individualized treatment for residents
3 committed to the facility. RCW § 71.09.060(1); RCW § 71.09.080(3).

4 24. An individual may be committed to the SCC following a judicial finding that he
5 or she is a “sexually violent predator” in that he or she has been convicted of or charged with a
6 crime of sexual violence and suffers from a mental abnormality or personality disorder which
7 makes the person likely to engage in predatory acts of sexual violence if not confined in a secure
8 facility. RCW § 71.09.020(19); RCW § 71.09.060.

9 25. While such commitment is indeterminate, a resident’s continuing need for
10 commitment may be reassessed through an annual review process. RCW § 71.09.070; RCW §
11 71.09.090. This annual review includes a determination of whether a person’s condition has
12 changed sufficiently that the resident no longer meets the definition of a sexually violent predator
13 or that conditional release to a less restrictive alternative is in the resident’s best interest and
14 conditions can be imposed that adequately protect the community. *Id.*

15 26. The annual review includes a record review and an evaluation of the resident by a
16 psychologist appointed by the SCC, after which an annual review report is issued.

17 27. During this periodic review, an individual may show that his or her condition has
18 changed by presenting evidence that there has been a change in his or her mental condition
19 brought about through positive response to continuing participation in treatment or by
20 demonstrating that there has been a permanent physiological change, such as paralysis, stroke, or
21 dementia, that renders the person unable to commit a sexually violent act. RCW §
22 71.09.090(4)(b).
23

1 28. In July 2015, the treatment in which an individual must engage in order to gain
2 release was legislatively limited to the sex offender specific treatment program (“SOT program”)
3 offered at the SCC. RCW § 71.09.020(20).

4 29. As a total confinement facility, the SCC is not a state licensed psychiatric facility
5 nor is it accredited by the Joint Commission, an independent organization that accredits many
6 other treatment facilities such as hospitals and nursing homes. Instead, the external oversight for
7 SCC treatment and programming is provided by the Inspection of Care (“IOC”) team, a
8 statutorily created group charged with conducting an annual inspection of the SCC. WAC § 388-
9 881-025.

10 30. After each inspection, the IOC team issues a report (“IOC Report”), identifying
11 areas of progress and continuing concern. The IOC has no authority to compel SCC to comply
12 with its recommendations. The SCC has persistently ignored these reports and recommendations.

13 31. The 2014 IOC team noted that despite finding deficiencies year after year, the
14 SCC’s response to many of the IOC team’s recommendations has been “slow to non-existent.”
15 (2014 IOC Report).

16 32. The 2015 IOC report noted that resident progress through the treatment program
17 remained slow and that the SCC continued to provide insufficient psychiatric and medical
18 coverage. (2015 IOC Report). Notably, while the 2015 IOC report noted that treatment program
19 hours have increased to more than eight hours for the special needs population, that finding was
20 not supported by DRW’s investigation.

21 **B. Defendants fail to provide appropriate and individualized care and treatment at the**
22 **SCC.**

23 **1) Plaintiffs and Plaintiff DRW’s constituents are subject to unreasonable**
conditions of confinement.

1 33. SCC residents are assigned to living units according to their behavior and
2 engagement in treatment.

3 34. Many individuals with mental illness, intellectual or developmental disabilities,
4 brain injuries and other cognitive conditions, including Plaintiffs and Plaintiff DRW's
5 constituents, have been assigned to Program Area One, defined by the SCC as a high
6 management area. This program area includes seven units: Alder North, Alder South, Alder
7 West, Birch, Cedar North, Cedar South and Cedar West.

8 35. The IOC team has repeatedly found that there is inadequate programming
9 occurring in Program Area One, with Alder North providing "no obvious treatment" in a unit
10 "more reminiscent of a correctional setting than a treatment facility." (2013 and 2014 IOC
11 Reports). Some of the "programming" offered includes coloring and Sudoku.

12 36. While the 2015 IOC report noted that the living units in Program Area One "are
13 no longer sterile in appearance," it is unclear what such an assessment is based on. (2015 IOC
14 Report). During DRW's most recent monitoring visits, which occurred after the IOC's visit,
15 there was little to no change in the appearance of these units, which remain bare and institutional.

16 37. Defendants have insufficient staffing in Program Area One and the staff that is
17 present in that area is not adequately trained to address the daily needs of residents with mental
18 illness, intellectual or developmental disabilities, brain injuries or other cognitive disorders.

19 38. SCC staff impose punitive and unreasonable external behavioral controls on
20 Plaintiffs and Plaintiff DRW's constituents, which are described in documents labeled "Current
21 Conditions."
22
23

1 39. Current Conditions have been used to order Plaintiffs and Plaintiff DRW's
2 constituents be locked in their units, and even their own rooms, for extended periods, sometimes
3 for as many as twenty one hours per day.

4 40. Current Conditions have also been used to limit personal property for some
5 residents in Program Area One; even that minimal property is subject to removal as a means of
6 punishment. Plaintiffs and Plaintiff DRW's constituents have been forced to earn back basic
7 necessities such as extra clothing and bedding as part of a Current Condition. These property
8 restrictions have been so severe that some residents are required to "check out" three crayons at a
9 time from the staff desk. However, these same residents are often restricted from approaching the
10 staff desk more than a few times per shift.

11 41. Current Conditions have also been used to limit a resident's ability to enter their
12 room, with one resident forced to be out of his room from 7 am until 10 pm, with only two
13 designated thirty minute periods in which he can be alone in his room.

14 42. Current Conditions documents are often renewed and extended for weeks, if not
15 months or years.

16 43. Use of these punitive Current Conditions is a substantial departure from accepted
17 professional judgment, standards or practice and demonstrates that Defendants did not base their
18 decisions on clinical judgment.

19 **2) Plaintiffs and Plaintiff DRW's constituents are subject to punishment in**
20 **response to their disability related behaviors.**

21 44. Plaintiffs and Plaintiff DRW's constituents are routinely given behavior
22 management reports (BMRs), or infractions, for behaviors that are related to their mental illness,
23 intellectual or developmental disability, brain injury or other cognitive disability.

1 45. The behaviors for which SCC residents have received infractions include failing
2 to follow staff directives, feeding wildlife, sharing food with other residents, hugging other
3 residents, self-harm and suicide attempts, exposing themselves, verbal aggression, and staff and
4 peer assault.

5 46. These BMRs result in lost privileges, including limited property and movement
6 within the facility.

7 47. Plaintiffs and Plaintiff DRW's constituents have been frequently placed in
8 seclusion in the intensive management unit (IMU) in response to disability related behaviors,
9 often for days, even weeks, at a time. Behaviors for which residents have been placed in the IMU
10 for extended periods include failing to follow staff directions, hugging another resident, and
11 engaging in self-harm.

12 48. The SCC's use of the IMU is punitive and counter-therapeutic, with extended
13 placements that are "virtually unheard of in modern psychiatric settings." (2012 IOC Report).

14 49. Though the IOC team cited SCC for its use of the IMU in 2012, the SCC
15 continued secluding residents in the IMU for years.

16 50. The 2014 IOC Report found that the SCC's use of the IMU was "outside the
17 standard of practice."

18 51. Though the SCC is in the process of implementing new policies governing
19 seclusion and restraint, facility records demonstrate that the IMU, now re-named the Alternative
20 Placement Unit, has continued to be utilized, albeit less frequently, over the course of DRW's
21 monitoring.

22 52. Plaintiffs and Plaintiff DRW's constituents have also been subject to seclusion in
23 their rooms, or in other rooms on the living unit.

1 53. Though the IOC team cited the facility for secluding residents in their rooms in
2 2012, the facility continued to engage in the practice for years.

3 54. One DRW constituent spent much of 2015 locked in his room for more than
4 twenty hours of the day; the window to his cell is covered by cloth on the outside, blocking his
5 view of the other residents on the unit and completely isolating him from human contact. SCC's
6 policy regarding seclusion was not followed during that time.

7 55. During that time, this constituent was released to the unit in restraints for a few
8 hours per day and segregated from other residents even during this out-of-cell time. The only
9 personal possessions that he had in his cell were a bible and a radio. To the extent that any
10 programming is offered on his unit, records reflect that he only participated by listening through
11 his cuff port.

12 56. Other DRW constituents have been routinely directed to stay in their rooms every
13 other hour, leaving them segregated for half of each day, for weeks or months on end.

14 57. Defendants' use of seclusion, both within the IMU and on residential units,
15 deviates substantially from generally accepted professional judgment, standards or practice and
16 demonstrates that Defendants did not base their decisions on clinical judgment.

17 **3) Plaintiffs and Plaintiff DRW's constituents with mental illness are not receiving**
18 **appropriate psychiatric care and mental health treatment at the SCC.**

19 58. Since at least 2010 the IOC team has consistently cited the SCC for failing to
20 provide adequate psychiatric care and programming to its residents with mental illness and has
21 cautioned that the SCC may be simply "warehousing" its residents with mental illness. (2012
22 IOC Report). In the most recent 2015 IOC report, the team found that the psychiatric coverage
23 provided at the SCC fails to meet "a professional standard." (2015 IOC Report).

1 59. Despite the IOC team's repeated warnings, and DRW's investigation and
2 monitoring, Defendants continue to fail to provide psychiatric services of adequate frequency,
3 duration, and substance to meet the mental health needs of Plaintiffs and Plaintiff DRW's
4 constituents.

5 60. Defendants do not have sufficient staff with specialized training to address the
6 daily needs of Plaintiffs and Plaintiff DRW's constituents with serious mental illness.

7 61. Until August 2015, the only staff psychiatrist employed by the SCC also served as
8 the medical director for the facility. This limited staffing was noted as an area of concern by the
9 2014 IOC team. In August 2015, that psychiatrist left and no replacement was hired. Instead,
10 Defendants contracted with a series of psychiatric providers who were rarely at the facility and
11 offered primarily medication authorization.

12 62. Even when there was a staff psychiatrist, the only mental health intervention
13 many residents with mental illness received was a monthly fifteen minute session with the
14 psychiatrist and psychiatric medication.

15 63. In 2014 the IOC team noted "major gaps" in the psychiatric documentation, and
16 stated that there was a need for more "sophisticated interventions," when resident behavior did
17 not respond to prescribed medications. An outside evaluator has described the psychiatric
18 medication administration at the SCC as "chaotic psychopharmacology."

19 64. Though Defendants finally hired a Psychiatrist in the summer of 2016, that
20 provider was not full time, contrary to the IOC's recommendation that "there needs to be between
21 1 and 1½ full time psychiatric positions to meet minimal needs" of the residents at the SCC. (IOC
22 Report 2015). Moreover, the current provider is only under contract until the end of the calendar
23 year.

1 65. Due to Defendants' failure to appropriately assess and treat residents with mental
2 illness, Plaintiffs and Plaintiff DRW's constituents have suffered cognitive decline while
3 confined at the SCC for care and treatment.

4 66. State court records reflect that one of DRW's constituents has been diagnosed
5 with a traumatic brain injury, dementia due to head trauma, with behavioral disturbance, and
6 Psychotic Disorder not otherwise specified, among other disorders. He has been confined for
7 over two decades at the SCC, since the age of 19.

8 67. While under SCC's care, his mental status has deteriorated. Outside evaluators
9 have opined that over the past twenty years at the SCC, this resident has been the subject of
10 "malpractice" and that the facility has failed to provide appropriate psychiatric care, therapy
11 specific to individuals with brain injuries, and needed rehabilitative services.

12 68. In 2013 this constituent was placed frequently in the IMU for disability related
13 behaviors, sometimes for more than a month at a time; in fact, court records reflect in 2013 and
14 2014, he spent 276 out of 413 days in segregation. However, as one outside evaluator in his case
15 noted "'Punishment treatment' and solitary confinement to force compliance with authority's
16 expectations have no place in the treatment of a severely mentally ill person."

17 69. During his time in segregation, this constituent was noted as being unresponsive,
18 often lying in a soiled bed for hours at a time. The SCC psychiatrist's response to these behaviors
19 was to assess him for malingering. Outside evaluators have opined that this constituent has been
20 subject to inadequate and negligent psychiatric mistreatment at the SCC.

21 70. Court records reflect that another one of Plaintiff DRW's constituents, a resident
22 with a serious mental illness, has been locked in his room for much of 2015. He was essentially
23 isolated, communicating with staff via an intercom and receiving his meals through his cuff port.

1 When he was released from his room for a few hours per day, he remained in ankle restraints and
2 the unit was cleared of other residents.

3 71. Treatment plans for some of DRW's other constituents indicate that they have
4 serious mental illness and are not provided with appropriate programming related to their mental
5 health condition and rarely see the facility's sole treating psychiatrist. They have instead been
6 locked in their rooms for large parts of each day in units which were likened to a correctional
7 setting by the IOC team.

8 72. Treatment plans for another constituent, now deceased, indicate that upon his
9 admission to the SCC in 2012, he was able to engage in the SOT programming at the facility and
10 manage his behavior. In 2013 he was placed in the IMU for suicidal thoughts. He was thereafter
11 moved to Alder North and repeatedly sent to the IMU for self-harm and assaultive behavior.
12 Treatment plans and psychiatric notes from 2013 indicate that he became delusional and was
13 experiencing active psychosis. During that time, the resident was prescribed antipsychotic
14 medication to little effect, and was seen with decreasing frequency by the facility psychiatrist. In
15 fact, psychiatric notes from that time period direct simply that "current care" be continued, with
16 no additional psychiatric interventions provided, despite the resident's worsening and
17 unexplained psychosis. That resident unexpectedly died in February 2016.

18 73. Defendants' failure to provide adequate mental health care to Plaintiffs' and
19 Plaintiff DRW's constituents with serious mental illness precludes these individuals from
20 participating in and benefitting from the SOT program.

21 74. The mental health care provided to Plaintiffs and Plaintiff DRW's constituents
22 falls far outside the generally accepted professional judgment, practice or standards in treating
23

1 individuals with serious mental illness and demonstrates that the Defendants did not base their
2 decision on such professional judgment.

3 **4) Defendants fail to provide appropriate and individualized SOT programming at**
4 **the SCC.**

5 75. The core sex offense treatment program at the SCC consists of five phases of
6 treatment.

7 76. This core sex offense program is set forth in the “Blue Book” and relies heavily
8 on reading and completing written assignments.

9 77. Residents that are unable to understand or complete the assignments in the core
10 sex offense program cannot progress through the phases of the program.

11 78. Residents with learning disabilities, cognitive disorders, severe mental illness or
12 an intellectual disability may be offered a “special needs” track SOT program at the SCC.

13 79. This special needs track covers five treatment domains, including Cooperation
14 with Supervision, Activities of Daily Living, Coping Skills, and Sex Offense Specific Treatment.

15 80. There are five “stages of change,” (SOC) or treatment phases in the special needs
16 track. In order to advance through the phases, a resident must make progress in all five domains
17 and the resident’s SOC is determined by averaging their scores in all five domains.

18 81. There are no objective criteria used to determine when a resident has completed a
19 SOC.

20 82. In 2011 the IOC team identified as a “top priority” the need to increase the
21 program hours for the special needs track SOT program to at least four hours per week.

22 83. The IOC team’s 2012 report again addressed the limited hours and programming
23 available to residents with special needs, noting the “substandard level of performance” and

1 anticipating that the longer a diminished level of programming was provided the more
2 “acceptable” it would appear to the SCC and the State to provide inadequate programming.

3 84. In 2014, the special needs track SOT program was scheduled to meet for one hour
4 and fifteen minutes, three times per week.

5 85. In 2015, the special needs track SOT program was scheduled to meet for one hour
6 and fifteen minutes, two times a week; a designated time at which residents may work on
7 homework assignments was scheduled twice per week for a total of two and a half hours as well.
8 However, special needs residents report that they do not receive homework.

9 86. In 2016, the special needs track SOT program was again scheduled for one hour
10 and fifteen minutes, twice per week, with an additional two and a half hour period once per week
11 designated as “Homework Group.” However, resident records reflect that additional classes such
12 as Knitting and Music Appreciation are also scheduled during this “Homework Group,” in the
13 same room at the very same time.

14 87. SOT groups are frequently cancelled due to staff shortages, treatment breaks, and
15 other external factors.

16 88. Treatment groups for the special needs population were cancelled in the summer
17 of 2016 due to staff shortages, with the 2015 IOC report noting a forty percent staff vacancy rate
18 at the SCC. (IOC 2015).

19 89. Other “specialty groups” and activities such as arts and crafts and karaoke are
20 sporadically offered to the special needs population.

21 90. These specialty groups and activities are offered based on availability of staff, not
22 the needs of residents.
23

1 91. According to waivers signed by residents, specialty groups are not considered
2 SOT programming and do not count as treatment sufficient to lead towards release from the
3 SCC.

4 92. SCC policy states that following three unexcused absences, residents in the
5 special needs SOT program may be suspended from the group.

6 93. Plaintiffs and Plaintiff DRW's constituents with memory impairments, cognitive
7 disabilities, and borderline intellectual functioning have been noted as having unexcused
8 absences and suspended from the SOT program.

9 94. SCC policy anticipates that residents may be precluded from entering the SOT
10 program, or asked to leave the group, due to disability related behaviors; such residents remain
11 suspended until the behaviors are "addressed."

12 95. Plaintiffs and Plaintiff DRW's constituents have been precluded from
13 programming or removed from group due to disability related behaviors, including violating
14 group confidentiality, "instability," exposing themselves, "disruptive" behavior, lack of impulse
15 control, inability to manage emotions, and "behavioral dysregulation."

16 96. Plaintiffs and Plaintiff DRW's constituents on unit restrictions or in the IMU due
17 to behavioral issues related to their disability have also been prevented from attending special
18 needs SOT programming.

19 97. The policies and procedures governing participation in the special needs SOT
20 programming effectively preclude Plaintiffs and Plaintiff DRW's constituents from engaging in
21 the special needs SOT program due to their disabilities.
22
23

1 98. Defendants have not modified the policies or procedures governing participation
2 in the special needs SOT programming in order to accommodate Plaintiffs' and Plaintiff DRW's
3 constituents' disabilities.

4 **Plaintiff R.R.**

5 99. R.R. has been diagnosed with a Major Neurocognitive Disorder due to traumatic
6 brain injury, among other disorders.

7 100. Shortly after R.R.'s placement at the SCC in 2004, SCC staff suggested cognitive
8 testing in order to determine the best course of treatment in light of his brain injury; such testing
9 has never been performed.

10 101. SCC staff have also suggested individual therapy in light of R.R.'s brain injury;
11 such therapy has never been offered.

12 102. R.R. has languished at the SCC for more than a decade with little to no
13 appropriate or individualized treatment, sex-offender specific or otherwise. Instead of treatment,
14 R.R. has been subject to harsh behavioral interventions, including being placed in the IMU and
15 locked in his room for large portions of the day, for weeks, if not months, on end. He rarely
16 leaves his unit and engages in little to no programming.

17 103. Plaintiff R.R. is not currently receiving adequate care and treatment at the SCC,
18 nor is he receiving individualized treatment that gives him a realistic opportunity to be cured or
19 improve his mental condition.

20 **Plaintiff R.G.**

21 104. Plaintiff R.G. was admitted to the SCC in 2004, at the age of 20.

22 105. Plaintiff R.G. has been diagnosed with a moderate to severe Intellectual
23 Disability, among other diagnoses. He has been assessed at the SCC as having academic

1 functioning at a first or second grade level. His functional impairment was described as “quite
2 profound” in a recent psychological evaluation.

3 106. R.G. has participated in the SOT program at the SCC intermittently for more than
4 a decade, where he remained in phase one. Plaintiff’s counsel raised concerns about how long he
5 had been at phase one in October 2015 and he had been moved to phase three of the program by
6 July 2016.

7 107. In 2014 R.G. asked his case manager to read documents to him, including
8 homework assignments from the special needs SOT program and his treatment plan; his case
9 manager opined that R.G. was unable to read any of the documents.

10 108. Despite Senior Clinical Team notes indicating that it would be “counter-
11 therapeutic” to continue behavioral restrictions for R.G., restrictive Current Conditions have
12 remained in place and R.G. continues to be housed in the high management units at SCC, with
13 behavioral restrictions and limited possessions.

14 109. R.G.’s recent annual review concluded that he likely did not possess the cognitive
15 ability to engage in cognitive based SOT therapy and that he would benefit from modeling and
16 positive reinforcement, as well as increased staff training regarding how to work with his
17 limitations.

18 110. The annual review further noted that R.G.’s current environment is not equipped
19 to meet his individual needs or protect him from victimization.

20 111. R.G.’s current treatment plan at the SCC continues to focus on following facility
21 rules, controlling his conduct and attending to hygiene, completing the cognitive based SOT
22 program, and adhering to restrictive Current Conditions. Interventions to address R.G.’s
23 cognitive limitations are not included in the treatment plan and his inability to complete

1 treatment assignments is inappropriately attributed to a lack of motivation, not his identified
2 intellectual disability. The treatment plan makes no mention of how SCC plans to address R.G.'s
3 apparent inability to read or comprehend his treatment documents.

4 112. Plaintiff R.G. is not currently receiving adequate care and treatment at the SCC,
5 nor is he receiving individualized treatment that gives him a realistic opportunity to be cured or
6 improve his mental condition.

7 **Plaintiff G.J.**

8 113. G.J. has been diagnosed with an Intellectual Disability, and alcohol related
9 Neurodevelopmental Disorder, as well as a series of other associated neurodevelopmental
10 disorders.

11 114. Plaintiff G.J.'s underlying sex offense occurred when he was 16; he completed a
12 five year juvenile commitment at Maple Lane and was transferred to SCC at the age of 21.

13 115. Both the SCC clinical team and outside evaluators have determined that G.J. may
14 benefit from individual therapy rather than group therapy in light of his intellectual disability and
15 cognitive deficits.

16 116. In 2013, G.J. was receiving 45 minutes per week of group therapy and one half
17 hour visit from his therapist per month.

18 117. G.J. has enrolled in the special needs SOT program but as of August 2016, that
19 program was not operating due to staff shortages.

20 118. Treatment plans note that G.J.'s intellectual disability and cognitive impairments
21 "impede his ability to focus in the group setting, understand treatment concepts, and apply the
22 treatment concepts to daily living."
23

1 119. A 2014 evaluation found that G.J.'s continued behavioral issues may be the result
2 of his "grossly impaired, enduring executive functioning."

3 120. Plaintiff G.J. is not currently receiving adequate care and treatment at the SCC,
4 nor is he receiving individualized treatment that gives him a realistic opportunity to be cured or
5 improve his mental condition.

6 **DRW Constituent J.L.**

7 121. J.L. is a DRW constituent and has been diagnosed with an Intellectual Disability
8 as well as Borderline Personality Disorder; he also has an extensive history of serious self-harm.

9 122. J.L. is currently attending the special needs SOT programming but has been
10 removed from group due to behavior issues in the past.

11 123. Staff have noted that J.L. has difficulty understanding concepts, particularly in the
12 group setting, and is unable to complete assignments properly.

13 124. While staff have considered contacting Western State Hospital for suggestions as
14 to how to treat J.L., his treatment at the SCC has remained essentially unchanged since his
15 arrival, with increasingly strict behavioral interventions and little to no advancement through the
16 SOT program.

17 125. J.L. has never been offered individual SOT therapy nor has the SCC staff
18 provided other accommodations that would assist J.L. in accessing appropriate treatment.

19 126. According to SCC documents, J.L.'s self-harm and cognitive limitations continue
20 to impede his ability to engage in treatment.

21 127. When J.L. has been terminated from the special needs SOT program in the past,
22 his treatment at the SCC has consisted of one thirty minute case management session per month.
23

1 128. J.L. is not receiving adequate psychiatric care at the SCC to address his serious
2 mental illness and enable him to participate in the SOT program.

3 129. J.L. is not receiving the appropriate habilitative programming necessary to
4 address his cognitive disabilities and related behaviors.

5 130. J.L. is not currently receiving adequate care and treatment at the SCC, nor is he
6 receiving individualized treatment that gives him a realistic opportunity to be cured or improve
7 his mental condition.

8 **DRW Constituent R.H.**

9 131. R.H. is a DRW constituent and has been diagnosed with an intellectual disability
10 but, despite being at the SCC for over fifteen years, there has never been a formal assessment of
11 his adaptive functioning.

12 132. R.H. has engaged in the SOT programming at the SCC since his admission to the
13 facility.

14 133. Despite being in the special needs track SOT program, R.H. has been repeatedly
15 noted to have difficulties understanding concepts; he has also repeated phases of treatment due to
16 his behavior or limited understanding.

17 134. R.H. has been asked to leave group due to his behaviors on multiple occasions.

18 135. After ten years in treatment, in 2010, SCC staff finally noted R.H.'s slow progress
19 in treatment.

20 136. Similar notes were made in subsequent years; possible explanations for R.H.'s
21 lack of progress in treatment that were offered by SCC staff included the possibility that
22 assignments are too difficult for him, procrastination, lack of understanding the content and
23 context of materials, or inability to write.

1 137. Despite perfect attendance in multiple treatment cycles, staff confusion regarding
2 R.H.'s failure to progress continued throughout 2014.

3 138. R.H. was in treatment phase two in November 2014, after almost fifteen years of
4 engaging in the treatment offered at the SCC.

5 139. Treatment plans for that year recognize that R.H.'s intellectual disability limits his
6 ability to understand the SOT programming; no clear plan was implemented to address this
7 continuing concern.

8 140. Though resident R.H. is continuing to participate in the SOT programming, he is
9 not currently receiving adequate care and treatment at the SCC, nor is he receiving
10 individualized treatment that gives him a realistic opportunity to be cured or improve his mental
11 condition.

12 **Other Constituents of Plaintiff DRW**

13 141. Each of the individual plaintiffs are constituents of Plaintiff DRW as are all other
14 individuals with cognitive disabilities who are denied adequate treatment, and the issues
15 identified by the individual plaintiffs are representative of the legal violations and harms suffered
16 by Plaintiff DRW's constituents.

17 142. DRW constituents spend years, some over a decade or two, with little or no
18 appropriate treatment at the SCC.

19 143. Some DRW constituents even get worse under the care of Defendants.

20 144. DRW constituents are not able to participate in either group SOT programming or
21 individual therapy due to their disabilities, and their treatment plans often include a continuing
22 direction to participate in SOT programming, but provide no alternative options that take into
23 account their disability related needs.

(c) a documented history of serious mental illness, developmental disability, intellectual disability, borderline intellectual functioning, traumatic brain injury or other cognitive condition that could impair his or her ability to function in the conventional treatment track;

(d) audio, visual or language impairments that may hinder his or her functioning in a conventional treatment track;

(e) a learning disorder that could interfere with his or her functioning in the conventional treatment track; or

(f) developmental, cognitive, or emotional treatment-interfering factors that currently impact his or her ability to effectively engage in conventional track treatment; and

(2) clinically appropriate for the SCC's habilitative treatment program for special needs residents.

163. **Size of Class.** The class of SCC residents with serious mental illness, developmental or intellectual disabilities, traumatic brain injuries or other cognitive conditions for whom a specialized habilitative mental health program is appropriate is expected to be so numerous that joinder of all members is impracticable. Through interviews with residents and review of clinical records, Disability Rights Washington has identified at least seventeen (17) residents who likely fall within this group and there may be more that have not yet been identified.

164. **Class Representatives.** Named Plaintiffs R.R., G.J., and R.G. each have either a mental illness, developmental or intellectual disability, traumatic brain injury, or other condition that makes it difficult for them to meaningfully understand and participate in the sex offender treatment program currently offered at the SCC. Each named plaintiff has resided in Program Area

1 One, the most restrictive housing at SCC, for some period of time and have therefore been subject
2 to the harsh conditions of those living units. The named Plaintiffs have also been subject to
3 “Current Conditions” which restricted their possessions or movement within the facility. G.J. has
4 been recognized as a “vulnerable adult” by the SCC. R.R. has been precluded from participating
5 in programming due to disability related behaviors and R.G., despite participating in the
6 specialized sex offender training currently offered at the SCC, has been unable to understand and
7 progress in that treatment, due to his disability. Each of the named Plaintiffs have been languishing
8 at the facility for years, R.R. and R.G. for more than a decade, without access to the individualized
9 and appropriate treatment to which they are constitutionally and statutorily entitled. Their claims
10 are therefore typical of the claims of the other members of the class, and they will fairly represent
11 the interests of the class. There is no known conflict of interest among the class members.

12 **165. Common Questions of Law and Fact.** This action requires the determination of
13 whether Defendants violated the 14th Amendment of the U.S. Constitution, the Rehabilitation Act,
14 and the Americans with Disabilities Act by failing to provide appropriate and individualized
15 treatment to SCC residents with serious mental illness, intellectual and developmental disabilities,
16 traumatic brain injuries, and other cognitive conditions, instead subjecting those residents to harsh,
17 punitive, and unreasonable conditions of confinement.

18 **166. Defendants Have Acted on Grounds Generally Applicable to the Class.**
19 Defendants have failed to create a habilitative treatment program designed for, and accessible to,
20 residents with serious mental illness, intellectual and developmental disabilities, traumatic brain
21 injuries, and other cognitive conditions. Defendants have failed to provide appropriate psychiatric
22 care or behavioral supports to these residents and have punished them for disability related
23 behavior, subjected them to restrictive living conditions, even segregation and restraint, and left

1 them to languish in the facility for years. Because Defendants have acted on grounds generally
2 applicable to the class, declaratory relief is appropriate for the whole class. Certification is
3 therefore proper under Fed. R. Civ. P. 23(b)(2).

4 168. **Class Counsel.** Plaintiff has retained experienced and competent class counsel.

5 **VI. Claims for Relief**

6 **Count I:**

7 **Failure to provide reasonable conditions of safety and freedom from unreasonable
restraint in Violation of the Fourteenth Amendment of the United States Constitution**

8 169. The allegations of the paragraphs above are incorporated herein.

9 170. The Fourteenth Amendment guarantees that “[n]o state shall deprive any person
10 of life, liberty or property, without due process of law.” U.S. Const. Amend XIV, § 1.

11 171. Defendants’ acts and omissions have violated Plaintiffs’ and Plaintiff DRW’s
12 constituents’ right to due process by failing to provide them with reasonable conditions of safety
13 and freedom from unreasonable restraint in a treatment facility, including confining them in
14 excessively harsh conditions, imposing punitive interventions in response to disability related
15 behaviors, and failing to provide adequate mental health treatment.

16 172. The conditions of confinement imposed by Defendants are such a substantial
17 departure from accepted professional judgment, practice or standards as to demonstrate that the
18 conditions imposed are not based on professional judgment.

19 **Count II:**

20 **Failure to Provide Treatment in Violation of the Fourteenth Amendment of the
United States Constitution**

21 173. The allegations of the paragraphs above are incorporated herein.
22
23

1 181. Plaintiffs and Plaintiff DRW's constituents are all "qualified individuals with a
2 disability" within the meaning of 42 U.S.C. § 12131(2) and are "otherwise qualified individuals
3 with a disability" within the meaning of the Rehabilitation Act, 29 U.S.C. § 794.

4 182. Defendant DSHS is a public entity as defined by 42 U.S.C. § 12131(1)(a).
5 Defendant DSHS receives federal financial assistance, and Defendant is thus subject to the
6 provisions of the Rehabilitation Act.

7 183. Defendant DSHS operates Defendant SCC for the purposes of control, care and
8 treatment of residents committed to the facility.

9 184. Defendants discriminate against Plaintiffs and Plaintiff DRW's constituents on
10 the basis of disability by excluding them from SOT participation due to their disability and fail to
11 provide needed accommodations or modifications in policies, practices and procedures such that
12 they may participate in and benefit from the SOT programming at the SCC.

13 185. Reasonable modification of Defendants' policies, practices and procedures would
14 not fundamentally alter the nature of their services, programs or activities but rather would
15 further Defendants' stated goal of providing individualized and appropriate care and treatment to
16 the Class.

17 **VII. Prayer for Relief**

18 186. Wherefore, Plaintiffs request that this Court:

19 187. Issue a declaratory judgment that the conduct, conditions, and treatment described
20 in the complaint violate Plaintiffs' constitutional rights in the manner identified in this complaint.

21 188. Issue a permanent injunction restraining Defendants from violating the Fourteenth
22 Amendment and the Americans with Disabilities Act in providing care and treatment at the SCC.
23

189. Issue an award for Plaintiffs' costs, litigation expenses, and reasonable attorney's fees pursuant to 42 U.S.C. § 1988 and 42 U.S.C. § 12205.

190. Such other and further relief as this Court may deem just and equitable.

Dated: February 1, 2017.

DISABILITY RIGHTS WASHINGTON

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